

A HONG LEONG BANK BHD v. KHAIRULNIZAM JAMALUDIN

FEDERAL COURT, PUTRAJAYA

AHMAD MAAROP FCJ

HASAN LAH FCJ

ABU SAMAH NORDIN FCJ

B

RAMLY ALI FCJ

ZAHARAH IBRAHIM FCJ

[CIVIL APPEAL NO: 03(i)-1-01-2015(W)]

19 MAY 2016

- C **BANKRUPTCY:** Notice – Setting aside – Appeal against decision – Default in repayment of outstanding sums under hire purchase agreement – Recovery of debts – Commencement of bankruptcy action against social guarantor – Compliance with s. 5(3) of Bankruptcy Act 1967 – Failure to obtain leave of court prior to commencement of bankruptcy action – Whether valid ground to set aside bankruptcy notice – Whether creditor could satisfy court during hearing of creditor's petition that all avenues to recover debts owed by hirer had been exhausted – Whether sufficient for creditor to show by way of affidavit that requirement under s. 5(3) had been satisfied
- D

- E **STATUTORY INTERPRETATION:** Construction of statutes – Intention of Parliament – Bankruptcy Act 1967, s. 5(3) – Default in repayment of outstanding sums under hire purchase agreement – Recovery of debts – Commencement of bankruptcy action against social guarantor – Failure to obtain leave of court prior to commencement of bankruptcy action – Whether valid ground to set aside bankruptcy notice – Whether sufficient for creditor to show by way of affidavit that requirement under s. 5(3) had been satisfied – Whether words in s. 5(3) clear and unambiguous
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- G The respondent, a social guarantor, had guaranteed the repayment of amounts outstanding under a hire purchase agreement entered into between the appellant and the hirer in respect of a motorcar for personal use. Since the hirer defaulted in repayment of the outstanding sums, the appellant took steps to repossess the motorcar from the hirer and commenced legal proceedings against the hirer and the respondent. Upon securing judgment against the hirer and the respondent, the appellant obtained receiving and adjudication orders against the hirer. Subsequently, a bankruptcy notice was issued and a creditor's petition was presented against the respondent.
- H However, the respondent's application to set aside the bankruptcy notice against him was allowed by the Senior Assistant Registrar on the ground that the appellant failed to show any proof to the satisfaction of the court that it had exhausted all avenues to recover the debts owed by the hirer pursuant to s. 5(3) of the Bankruptcy Act 1967 ('the Act'). On appeal, the Judicial Commissioner took a different view by deciding that the appellant had shown proof to the satisfaction of the court that it had exhausted all avenues to
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recover the debts owed by the hirer. Nevertheless, the appeal was dismissed since the appellant failed to comply with the requirements under s. 5(3) of the Act before commencing bankruptcy proceedings against the respondent by not applying for leave of court for that purpose. Similarly, the Court of Appeal dismissed the appellant's appeal. Hence, this appeal. The question of law posed for determination was whether the phrase 'unless he proves to the satisfaction of the court that he has exhausted all avenues to recover debts owed to him by the debtor' in s. 5(3) of the Act required a judgment creditor to obtain leave of court prior to commencing a bankruptcy action against a social guarantor.

Held (allowing appeal with costs)

Per Hasan Lah FCJ delivering the judgment of the court:

- (1) In interpreting the provisions of a statute, one of the cardinal rules was to adhere as closely as possible to the literal meaning of the words. The duty of the court was limited to interpreting the words used by the Legislature and to give effect to the words used by it. Where the language used is clear and unambiguous, it was not the function of the court to re-write the statute in a way which it considered reasonable. (para 29)
- (2) The issuance of a bankruptcy notice in Form 5 is pursuant to s. 3(2) of the Act and r. 91 of the Bankruptcy Rules 1969 ('the Rules'). There was nothing in the Act or the Rules which stated that leave must first be obtained before a bankruptcy notice was issued by the court. If the Legislature had so intended, that requirement would have been spelt out in an express and clear provision to that effect. Such an important requirement could not be inferred from the words used in s. 5(3) of the Act. (paras 25 & 28)
- (3) The words 'bankruptcy action' in s. 5(3) of the Act had to be read as 'bankruptcy petition' and under s. 2 of the Act, the term 'bankruptcy petition' includes a petition for receiving order. On a proper reading of ss. 5 and 6 of the Act, a creditor had to satisfy the court at the hearing of the creditor's petition that the creditor had exhausted all avenues to recover debts owed to him by the debtor. This could be done by way of an affidavit pursuant to s. 6(1) of the Act. At this stage, the court was required to make a judicial decision on the creditor's petition. On the other hand, when the court issued a bankruptcy notice pursuant to r. 91 of the Rules, the procedure was more administrative in nature. (paras 32 & 34)
- (4) The purpose of s. 5(3) of the Act was to protect a social guarantor. When a receiving order is made by the court against a debtor, the official assignee becomes the receiver of the property of the debtor. The receiving order does not have the effect of making the debtor a bankrupt. The debtor is a bankrupt only if adjudged so by the adjudication order

A pursuant to s. 24 of the Act. An adjudication order may be made simultaneously with the making of the receiving order. There would be sufficient compliance with s. 5(3) if a creditor shows by way of affidavit at the hearing of the creditor's petition that he had satisfied the requirements under s. 5(3). (paras 33 & 34)

B (5) The appellant had proved that it had exhausted all avenues to recover the debts owed to it by the hirer. As such, the appellant had satisfied the requirement of s. 5(3) of the Act to commence bankruptcy action against the respondent. In the circumstances, the question of law posed in this appeal was answered in the negative. (paras 35 & 36)

C *Bahasa Malaysia Headnotes*

Responden, seorang penjamin sosial, menjamin pembayaran balik jumlah terhutang di bawah perjanjian sewa beli yang dimeterai oleh perayu dan penyewa bagi pembelian sebuah motokar untuk kegunaan persendirian.

D Memandangkan penyewa gagal membayar balik hutangnya, perayu mengambil langkah untuk mengambil semula milikan motokar tersebut dan memulakan tindakan undang-undang terhadap penyewa dan responden. Setelah berjaya memperolehi penghakiman terhadap penyewa dan responden, perayu mendapat perintah penerimaan dan penghukuman terhadap penyewa. Notis kebangkrapan dikeluarkan dan satu petisyen pemiutang dikemukakan terhadap responden. Walau bagaimanapun, permohonan responden untuk mengetepikan notis kebangkrapan yang difailkan terhadapnya dibenarkan oleh Penolong Kanan Pendaftar atas alasan perayu gagal menunjukkan sebarang bukti atas kepuasan mahkamah bahawa ia menggunakan segala cara untuk menuntut kembali hutang daripada

F penyewa berikutan s. 5(3) Akta Kebankrapan 1967. Atas rayuan, Pesuruhjaya Kehakiman mengambil pendekatan berbeza dengan memutuskan bahawa perayu menunjukkan bukti atas kepuasan mahkamah bahawa ia telah menggunakan segala cara untuk menuntut kembali hutang daripada penyewa. Walau bagaimanapun, rayuan ditolak kerana perayu gagal mematuhi

G kehendak s. 5(3) Akta sebelum memulakan prosiding kebangkrapan terhadap responden dengan tidak memohon untuk kebenaran mahkamah bagi tujuan tersebut. Mahkamah Rayuan juga menolak rayuan perayu. Oleh itu, rayuan ini. Persoalan undang-undang yang dikemukakan untuk pertimbangan adalah sama ada frasa 'selagi dia membuktikan atas kepuasan mahkamah bahawa dia

H telah menggunakan segala cara untuk menuntut kembali hutang daripada penghutang' berikutan s. 5(3) Akta memerlukan pemiutang penghakiman untuk memperolehi kebenaran mahkamah sebelum memulakan tindakan kebangkrapan terhadap seorang penjamin sosial.

Diputuskan (membenarkan rayuan dengan kos)

I **Oleh Hasan Lah HMP menyampaikan penghakiman mahkamah:**

(1) Dalam mentafsir peruntukan sesuatu statut, salah satu peraturan asas adalah untuk mematuhi sehampir mungkin pengertian literal perkataan tersebut. Tanggungjawab mahkamah terhad untuk mentafsir perkataan-

- perkataan yang digunakan oleh Badan Perundangan dan memberi kesan kepada perkataan-perkataan yang digunakan olehnya. Apabila bahasa yang digunakan jelas dan nyata, mahkamah tidak mempunyai tugas menulis semula statut tersebut seperti mana dianggapnya munasabah. A
- (2) Pengeluaran notis kebangkrapan dalam Borang 5 adalah berikutan s. 3(2) Akta dan k. 91 Kaedah-Kaedah Kebankrapan 1969 ('Kaedah-Kaedah'). Tidak terdapat apa-apa di dalam Akta atau Kaedah-Kaedah tersebut yang memperuntukkan bahawa kebenaran mahkamah perlu diperolehi terlebih dahulu sebelum notis kebangkrapan dikeluarkan oleh mahkamah. Jika Badan Perundangan mempunyai niat sedemikian, kehendak tersebut akan diperuntukkan secara nyata dan jelas. Kehendak sepenting itu tidak boleh dianggap daripada perkataan-perkataan yang dinyatakan di dalam s. 5(3) Akta. B C
- (3) Perkataan 'tindakan kebangkrapan' di bawah s. 5(3) Akta hendaklah dibaca sebagai 'petisyen kebangkrapan' dan di bawah s. 2 Akta, terma 'petisyen kebangkrapan' merangkumi petisyen untuk perintah penerimaan. Berdasarkan tafsiran ss. 5 dan 6 Akta, seseorang pemiutang hendaklah memuaskan mahkamah semasa pendengaran petisyen pemiutang bahawa pemiutang telah menggunakan segala cara untuk menuntut kembali hutang daripada penghutang. Ini boleh dilakukan melalui affidavit di bawah s. 6(1) Akta. Pada peringkat ini, mahkamah perlu membuat keputusan kehakiman terhadap petisyen pemiutang. Sebaliknya, apabila mahkamah mengeluarkan notis kebangkrapan di bawah k. 91 Kaedah-Kaedah, prosedurnya adalah lebih bersifat pentadbiran. D E
- (4) Tujuan s. 5(3) Akta adalah untuk memberi perlindungan kepada penjamin sosial. Apabila perintah penerimaan dibuat oleh mahkamah terhadap penghutang, pegawai pemegang harta menjadi penerima harta penghutang. Perintah penerimaan tidak menjadikan seseorang penghutang itu muflis. Penghutang menjadi muflis hanya jika dihakimi sedemikian melalui perintah penghukuman berikutan s. 24 Akta. Perintah penghukuman boleh dibuat serentak dengan pengeluaran perintah penerimaan. Terdapat pematuhan mencukupi dengan s. 5(3) jika pemiutang dapat menunjukkan melalui affidavit semasa pendengaran petisyen pemiutang bahawa beliau telah mematuhi kehendak s. 5(3). F G
- (5) Perayu telah membuktikan bahawa ia telah menggunakan segala cara untuk menuntut kembali hutang yang perlu dibayar oleh penyewa. Oleh itu, perayu telah mematuhi kehendak s. 5(3) Akta untuk memulakan tindakan kebangkrapan terhadap responden. Dalam keadaan ini, persoalan undang-undang yang dikemukakan dalam rayuan ini dijawab secara negatif. H I

A Case(s) referred to:

Andrew Lee Siew Ling v. United Overseas Bank (Malaysia) Bhd [2013] 1 CLJ 24 FC (refd)

Azham Othman; Ex p Affin Bank Bhd [2012] 2 CLJ 96 HC (refd)

Chin Choy & Ors v. Collector of Stamp Duties [1978] LNS 26 FC (refd)

Malaysia Shipyard and Engineering Sdn Bhd v. Bank Kerjasama Rakyat Malaysia Bhd [1985] 1 LNS 166 SC (refd)

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Mamat Taib (Timbalan Ketua Polis, Johor) & Anor v. Abdul Jalil Rashid [2005] 4 CLJ 892 CA (refd)

Mokhtar Amin v. Mohamed Mokhtar Omar [2001] 4 CLJ 489 CA (refd)

Sangeeta Singh v. Union of India And Ors [2005] 7 SCC 484 (refd)

Sri Bangunan Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Anor [2007] 5 CLJ 673 FC (refd)

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United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin [2001] 2 CLJ 31 CA (refd)

Legislation referred to:

Bankruptcy Act 1967, ss. 2, 3(2), 5(3), 6(1), (2), 24

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Bankruptcy Rules 1969, rr. 91, 92

For the appellant - Tan Gian Chung & Izzan Ahmad Zairee; M/s Shook Lin & Bok

For the respondent - Yusman Che Aman; M/s Hazura Yusoff & Partners

[Editor's note: For the Court of Appeal judgment, please see *In Re: Khairulnizam Jamaludin; Ex p Hong Leong Bank Bhd* [2014] 1 LNS 1149 (overruled).]

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Reported by Kumitha Abd Majid

JUDGMENT

Hasan Lah FCJ:

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Introduction

[1] This is an appeal against the decision of the Court of Appeal given on 11 July 2014 which upheld the decision of the Kuala Lumpur High Court affirming the Senior Assistant Registrar's decision to set aside the appellant's bankruptcy notice against the respondent.

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[2] The leave to appeal was given by this court on 6 January 2015 on the following question of law:

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Whether the phrase 'unless he proves to the satisfaction of the court that he has exhausted all avenues to recover debts owed to him by the debtor' in section 5(3) of the Bankruptcy Act 1967 requires a judgment creditor to obtain leave of court prior to commencing a bankruptcy action against a social guarantor?

Background Facts

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[3] The respondent had guaranteed the repayment of amounts outstanding under a hire purchase agreement ("HP agreement") between the appellant and one Mohd Shahreen bin Abd Khabir ("hirer") in respect of a motorcar for personal use.

- [4] Upon the hirer's default in repayment of the outstanding sums under the HP agreement, the appellant took steps to repossess the motorcar from the hirer and commenced legal proceedings against the hirer and the respondent. The appellant obtained a judgment in default of appearance against the hirer and the respondent on 15 January 2010. The judgment was served on the hirer and the respondent under cover of the appellant's former solicitors' letter dated 30 March 2010. A
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- [5] On 31 March 2011, the appellant obtained receiving and adjudication orders against the hirer.
- [6] On 15 August 2011, the appellant filed a request for issue of bankruptcy notice and a bankruptcy notice against the respondent. *Vide* orders dated 4 November 2011, the validity of the bankruptcy notice against the respondent was extended and the bankruptcy notice was ordered to be served on the respondent by way of substituted service. It was effected on 30 November 2011 and 2 December 2011. C
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- [7] On 29 March 2012 the appellant presented a creditor's petition against the respondent. In response, the respondent issued a letter dated 7 June 2012 to the appellant, proposing to settle his debt totalling RM50,000 by paying monthly instalments of RM200 and a deposit of RM2,000. The settlement proposal was rejected by the appellant. E
- [8] The respondent then issued a letter dated 7 September 2012 to the appellant to inform the latter that the motorcar can be repossessed at a particular address in Port Klang.
- [9] On 26 September 2012, the respondent applied to set aside the bankruptcy notice on the following grounds: F
- (a) The respondent had not been personally served either the judgment or bankruptcy notice;
 - (b) The outstanding sum stated in the bankruptcy notice was wrong;
 - (c) The respondent had a meritorious defence to the appellant's claim against him under the guarantee; and G
 - (d) The respondent would ensure that the motorcar be returned to the appellant.
- [10] The appellant's authorised repossession agent issued a letter dated 23 October 2012 confirming that he had made several attempts to repossess the motorcar at the address in Port Klang provided by the respondent but to no avail. H

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A Decision Of The High Court

[11] The Senior Assistant Registrar allowed the respondent's application to set aside the bankruptcy notice on the ground, *inter alia*, that the appellant failed to show any proof to the satisfaction of the court that the appellant had exhausted all avenues to recover the debt owed by the hirer pursuant to s. 5(3) of the Bankruptcy Act 1967 ("Act").

[12] The appellant's appeal to the learned Judicial Commissioner against that decision was dismissed on 30 October 2013. The learned Judicial Commissioner however disagreed with the reason given by the Senior Assistant Registrar. Instead, the learned Judicial Commissioner held that the appellant had shown proof to the satisfaction of the court that the appellant had exhausted all avenues to recover the debt owed by the hirer. The learned Judicial Commissioner held that the appellant had taken steps to locate the car, but failed to repossess the same. The hirer was also adjudged a bankrupt on the application by the appellant.

[13] However, the learned Judicial Commissioner held that the appellant had not complied with s. 5(3) of the Act before commencing the bankruptcy proceedings against the respondent who was a social guarantor as the appellant did not apply for leave to court for that purpose.

E Decision Of The Court Of Appeal

[14] The appellant's appeal against the decision of the learned Judicial Commissioner was dismissed by the Court of Appeal on 11 July 2014. From the judgment of the Court of Appeal it was not clearly stated why the appeal was dismissed. However, reading between the lines it can be assumed that the Court of Appeal agreed with the decision of the learned Judicial Commissioner that leave was required before the appellant commenced a bankruptcy proceeding against the respondent.

Parties' Submissions

[15] Learned counsel for the appellant submitted that s. 5(3) of the Act does not require the petitioning creditor to obtain leave of court to commence a bankruptcy action against a social guarantor. The provision only requires the petitioning creditor to prove to the satisfaction of the court that it has exhausted all avenues to recover debts owed to him by the debtor. The provision does not say that the act of proving to the satisfaction of the court has to take place before the commencement of a bankruptcy action. It was also submitted that there is no procedural mechanism provided in the Act or the Bankruptcy Rules 1969 ("Rules 1969") as to how the petitioning creditor is to prove it.

[16] It was the contention of learned counsel of the appellant that both the courts below erred in deciding that the appellant should have obtained leave prior to commencing the bankruptcy action against the respondent as it was

not provided under the Act or the Rules 1969 that a petitioning creditor must file an *ex parte* application for leave to commence a bankruptcy action against a social guarantor when applying for the issue of a bankruptcy notice. According to learned counsel the courts must avoid such construction which would result in filling in the gaps of a statute. The following cases were cited as an authority for that proposition:

- (a) *Sri Bangunan Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Anor* [2007] 5 CLJ 673; [2007] 6 MLJ 581;
- (b) *Malaysia Shipyard and Engineering Sdn Bhd v. Bank Kerjasama Rakyat Malaysia Bhd* [1985] 1 LNS 166; [1985] 2 MLJ 359;
- (c) *Sangeeta Singh v. Union of India And Ors* [2005] 7 SCC 484.

[17] It was further submitted by learned counsel for the appellant that in the instant case the appellant had proven to the satisfaction of the court that the appellant had exhausted all avenues to recover the debt owed by the hirer. As such, the non-compliance (if any) was merely with regard to the procedure and did not occasion any prejudice to the respondent. In support of that the following cases were cited:

- (a) *Mamat Taib (Timbalan Ketua Polis, Johor) & Anor v. Abdul Jalil Rashid* [2005] 4 CLJ 892; [2006] 2 MLJ 108;
- (b) *United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin* [2001] 2 CLJ 31; [2001] 1 MLJ 561;
- (c) *Mokhtar Amin v. Mohamed Mokhtar Omar* [2001] 4 CLJ 489; [2001] 4 MLJ 329.

[18] In response, learned counsel for the respondent merely submitted that under s. 5(3) of the Act leave was required to commence a bankruptcy petition against the respondent. No case law was referred to by learned counsel for the respondent in his brief submission and he did not even file a written submission for the respondent.

Our Decision

[19] Section 5(3) of the Act provides:

- (3) A petitioning creditor shall not be entitled to commence any bankruptcy action against a social guarantor unless he proves to the satisfaction of the court that he has exhausted all avenues to recover debts owed to him by the debtor.

[20] Under s. 2 of the Act “social guarantor” has been defined as a person, *inter alia*, who provides, not for the purpose of making profit, a guarantee for a hire purchase transaction of a vehicle for personal or non-business use.

- A [21] The procedure for issue of a bankruptcy notice is provided under r. 92 of the Rules 1969 as follows:

When applying for the issue of a bankruptcy notice, the creditor shall:

- B (a) produce to the Registrar an office copy of the judgment or order on which the notice is founded;
(b) file the notice, together with a request for issue;
(c) lodge sufficient number of copies of the bankruptcy notice to be sealed and issued for service.

- C [22] In *Azham Othman; Ex p Affin Bank Bhd* [2012] 2 CLJ 96, one of the issues before the court was whether leave of court was mandatory to commence bankruptcy action against a social guarantor. At pp. 112 and 113 of the report, the High Court said:

- D (III) In my view that failure to provide a specific procedural mechanism does not mean the judgment creditor cannot seek the leave of court and satisfy the criteria in s. 5(3) of the Bankruptcy Act 1967 before issuing the bankruptcy notice. In my view there are various procedural methodologies the judgment creditor could employ to satisfy the criteria set out in s. 5(3). One is O. 5 r. 3 of the Rules of the High Court 1980 which states:

- E Proceedings by which an application is to be made to the High Court or a judge thereof under any written law must be begun by originating summons except where by these rules or by or under any written law the application in question is expressly required or authorised to be made by some other means. This rule does not apply to an application made in pending proceedings.

- F I am mindful of the fact that the Rules of the High Court 1980 generally may not apply to bankruptcy proceedings unless there is *lacuna*. However, on this issue it must be noted the seeking of leave is not a commencement of bankruptcy proceedings under the Bankruptcy Act 1967 or its rules. I am also mindful of the fact of the decision of Justice Gopal Sri Ram JCA (as he then was) in *Malaysia Building Society Bhd (supra)* where it was held that the Bankruptcy Act 1967 is a complete code within the framework of which must be found all the powers exercisable by the high court by the bankruptcy jurisdiction. If O. 5 r. 3 of the Rules of the High Court 1980 is not employed then taking the lead from the above case one may file an application at the time the request for bankruptcy notice is filed and obtain the leave of court before the bankruptcy notice is issued. The application can be *ex parte* and must specifically seek an order for the bankruptcy notice to be issued only upon leave being granted. It will be prudent to serve the application to the judgment debtor at leave stage at the last known address to give ample opportunity for the judgment debtor to contest the same.
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- [23] It is pertinent to note that in the instant case the learned Judicial Commissioner, after having considered the affidavits filed by the appellant, held that the appellant had taken all the necessary steps, and had exhausted all avenues against the hirer. Therefore, as pointed by the learned Judicial Commissioner in her judgment, the only issue in the instant case was whether the appellant should have filed an *ex parte* application for leave to commence bankruptcy proceedings against the respondent, a social guarantor, before the appellant filed the bankruptcy notice or would the filing of an affidavit to explain all the steps taken against the hirer is enough to satisfy the requirement of s. 5(3) of the Act. A B
- [24] The learned Judicial Commissioner then agreed with the decision in *Azham Othman; ex p Affin Bank Bhd (supra)* that the appellant must apply for leave before commencing the bankruptcy proceedings against the social guarantor. C
- [25] The issuance of a bankruptcy notice in Form 5 is pursuant to s. 3(2) of the Act and r. 91 of the Rules 1969. It is pertinent to note that in Form 4 and 5 of the Rules 1969 a creditor is not required to state that he has complied with the requirement of s. 5(3) of the Act. At the same time there is nothing in the Act or the Rules 1969 to say that leave must first be obtained before a bankruptcy notice is issued by the court. D
- [26] There are certain formalities to be observed when filing the bankruptcy notice. It must be accompanied by a request to the Registrar to issue a bankruptcy notice. The bankruptcy notice is dated by the Registrar and sealed. There must be an endorsement upon the notice stating that if the debtor has any set-off, counterclaim or cross-demand, he must file an affidavit to that effect. E F
- [27] After those formalities are complied with by the creditor the court is required to issue the bankruptcy notice.
- [28] With respect, we are unable to agree with the decision of the courts below. If the Legislature has so intended one would expect it to have spelt out that requirement in an express and clear provision to that effect. Such an important requirement cannot, in our view, be inferred from the words used in s. 5(3) of the Act. We are not at liberty to brush aside the explicit provisions of s. 5(3) of the Act and r. 92 of the Rules 1969. There is nothing to say that leave must first be obtained by the creditor before a bankruptcy notice is applied. G H
- [29] In interpreting the provisions of a statute, one of the cardinal rules is to adhere as closely as possible to the literal meaning of the words. The duty of the court is limited to interpreting the words used by the Legislature and to give effect to the words used by it. Where the language used is clear and I

- A unambiguous, it is not the function of the court to re-write the statute in a way which it considers reasonable. In *Chin Choy & Ors v. Collector of Stamp Duties* [1978] LNS 26; [1979] 1 MLJ 69 at 70, the Federal Court said:

- B It may be apposite at this stage to recall certain basic principles in the interpretation of statutes. Applying the words and phrases of a statute in their ordinary meaning has been said to be the first and most elementary rule of construction and the second is said to be to construe the phrases and sentences according to the rules of grammar.

- C It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed, per Bayley J. in *R. v Ramsgate* (Inhabitants).

[30] In *Andrew Lee Siew Ling v. United Overseas Bank (Malaysia) Bhd* [2013] 1 CLJ 24; [2013] 1 MLJ 449 the Federal Court had this to say at pp. 457-458:

- D Section 17A of the Interpretation Act provides that:

A construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote the purpose or object.

- E On the proper application of the provision of the said s. 17A of the Interpretation Act we would refer to the case of *All Malayan Staff Union v. Rajasegaran & Ors* [2006] 6 MLJ 97 wherein the court had laid down the principles, *inter alia*, as follows:

In summarising the principles governing the application of the purposive approach to interpretation, *Craies on Legislation* (8th Ed) says at p 566:

- F (1) Legislation is always to be understood first in accordance with its plain meaning;
- G (2) Where the plain meaning is in doubt the court will start the process of construction by attempting to discover from the provisions enacted, the broad purpose of the legislation;
- H (3) Where a particular reading advance the purpose identified, and would do no violence to the plain meaning of the provisions enacted, the courts will be prepared to adopt that reading.
- (4) Where a particular reading would advance the purpose identified but would strain the plain meaning of the provisions enacted, the results will depend on the context and, in particular, on a balance of the clarity of the purpose identified and the degree of strain on the language.

- I [31] It is pertinent to note that s. 5 of the Act deals with creditor's petition and under the heading of "receiving order". Section 6(1) of the Act provides that a creditor's petition shall be verified by affidavit of the creditor or of some person on his behalf having knowledge of the facts. Section 6(2) of the Act provides that at the hearing of the creditor's petition the court may make a receiving order in pursuance of the petition.

[32] On a proper reading of ss. 5 and 6 of the Act we are of the view that a creditor has to satisfy the court at the hearing of the creditor's petition that the creditor has exhausted all avenues to recover debts owed to him by the debtor. This can be done by way of an affidavit pursuant to s. 6(1) of the Act. Furthermore at this stage the court is required to make a judicial decision on the creditor's petition. On the other hand, when the court issued a bankruptcy notice pursuant to r. 91 of the Rules 1969 the procedure is more administrative in nature.

[33] The purpose of having s. 5(3) of the Act which was inserted by Act A1197 is to protect the social guarantor. There are cases where the creditors have been taking the easiest and shortest way out by claiming the defaulted loans from the guarantors directly without making serious effort to get the payments from the principal borrowers. This provision will therefore protect these guarantors from being adjudged bankrupt easily. By issuing a bankruptcy notice against a guarantor it does not make him a bankrupt. When a receiving order is made by the court against a debtor the official assignee becomes the receiver of the property of the debtor. The receiving order does not have the effect of making the debtor bankrupt. The aim of the receiving order is to protect the debtor's property. The debtor is a bankrupt only if adjudged so by the adjudication order pursuant to s. 24 of the Act. An adjudication order may be made simultaneously with the making of the receiving order.

[34] In our judgment, a reading of s. 5(3) of the Act in the context of the purpose identified above would clearly advance the meaning that it would be sufficient compliance with s. 5(3) of the Act if a creditor shows by way affidavit at the hearing of the creditor's petition that he has satisfied the requirement of s. 5(3) of the Act. The words "bankruptcy action" in s. 5(3) of the Act has to be read as "bankruptcy petition". Under s. 2 of the Act the term "bankruptcy petition" includes a petition for receiving order.

[35] In the instant case the High Court, as mentioned earlier, was satisfied from the affidavit evidence that the appellant had proved that it had exhausted all avenues to recover debts owed to him by the hirer. As such the appellant had satisfied the requirement of s. 5(3) of the Act to commence the bankruptcy action against the respondent.

[36] For the reasons given above, we answer the question of law posed in this appeal in the negative. Accordingly, we allow the appeal by the appellant with costs. The orders of the courts below are set aside.

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